



April 5, 2001

Ms. Leslie Poynter Dixon  
Criminal District Attorney  
Van Zandt County  
202 N. Capitol  
Canton, Texas 75103

OR2001-1460

Dear Ms. Dixon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145897.

Van Zandt County (the "county") received a request for information related to litigation pending against the county by Vicki Looney. You indicate that most of the responsive information has been released to the requestor. However, you claim that a portion of responsive attorney fee bills, which you redacted from the information released to the requestor, is excepted from disclosure under section 552.107(1) of the Government Code. The requestor has also provided comment. *See* Gov't Code § 552.304. You have provided the responsive information to this office for review. We have considered your comments and those of the requestor and reviewed the submitted information.

We first note that the submitted information is subject to section 552.022 of the Government Code. This section enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. Section 552.022(a)(16) defines one such category as "[i]nformation that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege." The submitted documents are attorney fee bills that must therefore be released under section 552.022(a)(16) unless the information is expressly made confidential under other law. Section 552.107(1) of the Government Code, which excepts information within the attorney-client privilege, is a discretionary exception under the Public Information Act and does not constitute "other law" for purposes of section 552.022. Open Records Decision No. 630 at 4 (1994) (governmental body may waive section 552.107(1)).

However, the attorney-client privilege is also found in Rule 503 of the Texas Rules of Evidence. Recently, the Texas Supreme Court held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, No. 00-0453, 2001 WL 123933, at \*8 (Tex. Feb. 15, 2001). Thus, we will determine whether the information is confidential under Rule 503.

Rule 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client’s lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer’s representative;

(C) by the client or a representative of the client, or the client’s lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(D) among lawyers and their representatives representing the same client.

A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. Tex. R. Evid. 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must 1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; 2) identify the parties involved in the communication; and 3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the document containing privileged information is confidential under Rule 503 provided the client has not waived the privilege or the document

does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.–Houston [14th Dist.] 1993, no writ). We find that none of these exceptions apply to the information at issue.

You have submitted both unredacted and redacted versions of the subject fee bills. We understand that you have released the redacted version to the requestor. The attorney-client communications privilege attaches to an entire document, not just to specific portions relating to legal advice, opinions or mental analysis. *See Pittsburgh Corning*, 861 S.W.2d at 425.<sup>1</sup> However, if the county chooses to waive the privilege, it need not withhold the entire document. *See* Tex. R. Evid. 511(1) (holder of a privilege under the Rules of Evidence waives the privilege if the person “voluntarily discloses or consents to the disclosure any significant part of the privileged matter”). Based on your markings and the information you have provided, it appears that the city seeks to withhold only the redacted portions of the submitted invoices and has consented to the disclosure of the remainder of the invoices. *See id.* After reviewing the submitted information, we agree that the redacted portions of the attorney invoices are privileged under Rule 503 of the Rules of Evidence. Therefore, you must withhold this information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

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<sup>1</sup>We have no information to establish the applicability of an exception to the attorney-client privilege in this case. *See* Tex. R. Evid. 503(d).

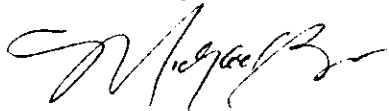
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 145897

Encl: Submitted documents

cc: Mr. Vince Leibowitz, Associate Editor  
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(w/o enclosures)